

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Mark Parkinson at 9:00 a.m. on January 13, 1993 in Room 531-N of the Capitol.

All members were present except:

Committee staff present: Michael Heim, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Chris McKenzie, League of Kansas Municipalities
John Torbert, Kansas Association of Counties
Gerry Ray, Johnson County Commission

Others attending: See attached list

The chairman noted that the purpose of meeting today was for a panel presentation giving an overview of local government structure and function. Mike Heim, Legislative Research, began with a presentation of a definition of types of local governments and their purposes. He distributed copies of information in this regard. (See Attachment 1)

Chris McKenzie, League of Kansas Municipalities, continued with a discussion of types and sizes of cities and forms of municipal government. (See Attachment 2)

John Torbert, Kansas Association of Counties, discussed county government, noting that the structure is basically the same in all 105 counties in the state. He gave a brief history of county government and explained how the State Constitution defines counties.

Chris McKenzie briefly discussed township governments. A question arose as to the need for townships, and it was concluded that the basic purpose is for the maintenance of roads.

Theresa Kiernan, Revisor of Statutes, began a brief review of the Open Records Act, the Open Meetings Act, Incapability of Office with a listing of compatible offices, and Conflicts of Interest and Governmental Ethics. (See Attachments 3 through 7)

The meeting concluded with Gerry Ray, Johnson County Commission, briefly discussing intergovernmental cooperation which she emphasized is the only way to provide services in the most cost effective way.

The meeting was adjourned at 10:00 a.m.

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Senate Local Gov't
1-13-93
Attachment 1

GC87(1)-1

Volume 1

**1987
Census of
Governments**

**Government
Organization**

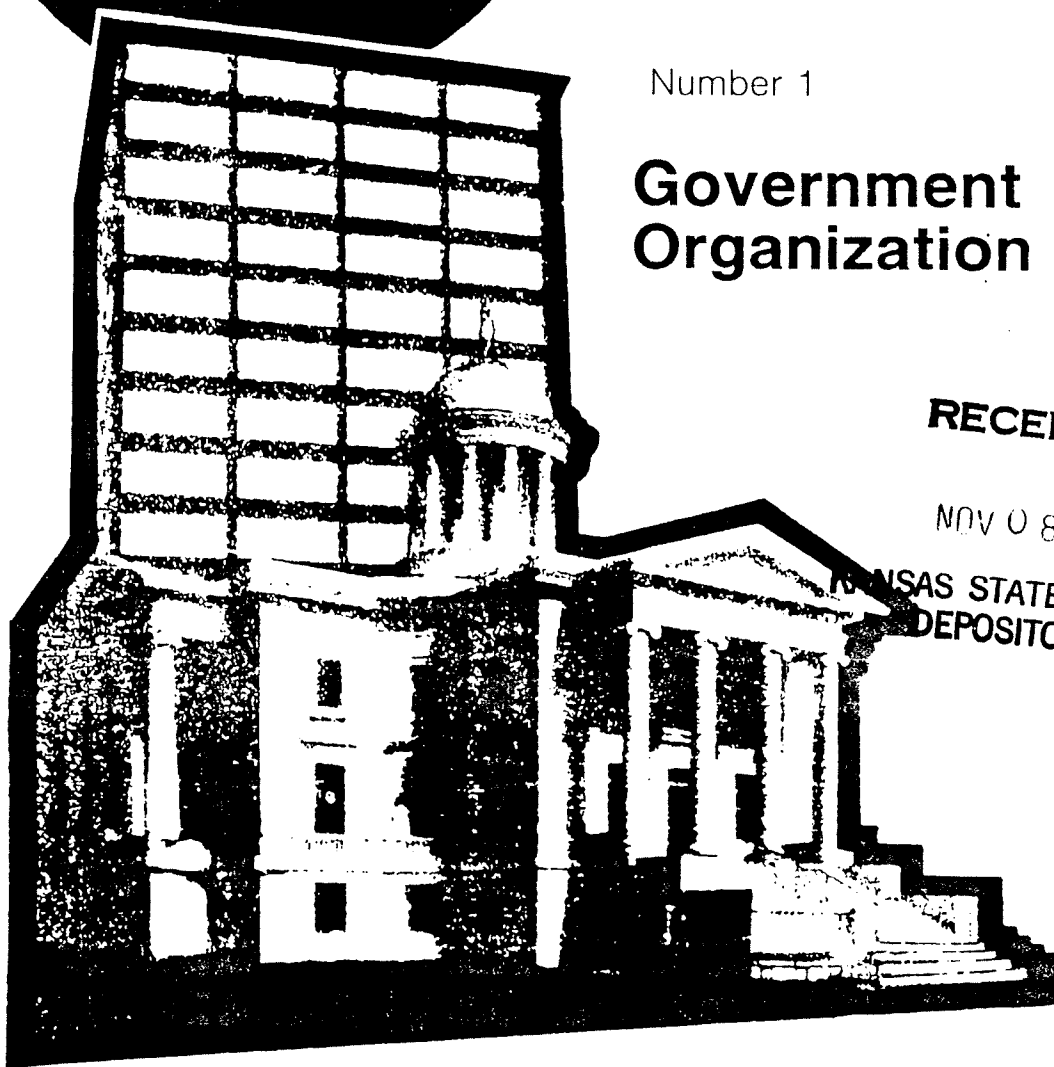
Number 1

**Government
Organization**

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INTRODUCTION

A census of governments is taken at 5-year intervals as required by law under title 13, United States Code, Section 161. This 1987 census, similar to those taken since 1957, covers four major subject fields—government organization, taxable property values, public employment, and government finances.

Volume 1, *Government Organization*, is the first volume of the 1987 Census of Governments to be released. It contains the official counts of the number of State and local governments. It also includes tabulations of governments by State, type of government, size, and county location.

The Government Organization phase of the census, which provides these data, also produces a universe list of governmental units, classified according to type of government, for use in the remaining phases of the census.

ORGANIZATION OF THIS REPORT

In this introductory text, the number, organization, and characteristics of governments are discussed and compared with prior census data. Summary tables and charts accompany the text, followed by a description of census methodology, data sources, and limitations of the data.

After the introductory text are the main tables. Tables 1-4 provide summary data on the number of governments by type and State in 1987 and in prior census years.

Tables 5-20 provide data on the numbers and characteristics of specific types of governments: general-purpose governments, (i.e., counties, municipalities, and townships) in tables 5-10; special district governments in tables 11-15; and public school systems (both school district governments and dependent school systems) in tables 16-20.

Data for designated geographic areas are provided in tables 21-23. Table 21 contains summary data on the numbers and characteristics of local governments inside and outside metropolitan statistical areas (MSA's); table 22 shows the number of intercounty local governments; and, finally, table 23 gives the number of local governments in each of the 3,139 county or county-type areas.

Following the tables is appendix A "Individual State Descriptions," which briefly describes the various local governments authorized in each of the 50 States and the District of Columbia. This section is preceded by an explanation of the procedures used to develop the descriptions and an outline of their content and organization.

Appendix B contains the criteria for classifying governments and definitions of various concepts used in this report. Appendix C contains a list of county-type areas without county governments.

A list of the consultants who reviewed the individual State descriptions appears in appendix D.

Changes in Content

This edition of volume 1 reflects some changes in content since the 1982 publication. For the first time, data on selected types of public services owned and operated by general-purpose governments were obtained from all municipal and township governments regardless of population size. Also, information on public facilities was expanded to include those owned and contracted out by county, municipal, or township governments. These data are shown in tables 8-10. Information on the type of operations performed by special district governments and their revenue powers are presented for the first time in tables 14 and 15. Data on the number of intercounty school district governments were not published in volume 1 in 1982 but are included in this report in table 22.

FINDINGS

There were 83,237 governmental units in the United States at the beginning of 1987. In addition to the Federal Government and the 50 State governments, there were 83,186 units of local government. Of these, 38,933 are general-purpose local governments—3,042 county governments, 19,200 municipal governments, and 16,691 township governments. The remainder (over one-half of the total) are limited-purpose local governments, including 14,721 school district governments and 29,532 special district governments.

The average number of local governmental units per State is 1,663 but Illinois has 6,627 while Hawaii has only 18. The following 10 States had more than 3,000 governments each: Illinois, Pennsylvania, Texas, California, Kansas, Minnesota, Ohio, New York, Nebraska, and Missouri. Together these 10 States account for nearly one-half (49 percent) of all governmental units in the Nation. Table 3 shows the number of governments in each State by type of unit.

The total number of governmental units in 1987 was 1,406 more than that reported for the 1982 census, an overall increase of 1.7 percent. Virtually all of the increase is in special district governments, which increased 5.2 percent over the 5-year period.

As shown by summary table A, there has been little change in the number of general-purpose governments compared with the previous five censuses. The number of county governments has remained relatively constant; the

number of municipal governments continues to increase slightly. While the number of township governments continues to record small declines. Limited-purpose governments, on the other hand, have had dramatic changes: School districts have decreased significantly, although the rate of decline has slowed in recent years; in contrast, there has been a substantial rise in the number of special district governments, which now comprise 35.5 percent of all governments, compared to 20 percent in 1962.

On a State-by-State basis, 34 States recorded increases ranging from 235 to 3 in their number of governments from 1982 to 1987. Three States—California, Montana, and Texas—gained 200 or more governments. These States combined accounted for an increase of 678 governments—48 percent of the total 5-year rise of 1,406 governments. The remainder of the increase was apportioned among 4 States that gained from 100-199 governments, 5 States that gained from 50 to 99 governments and 22 States that showed increases of government units ranging from 1 to 49. Decreases ranging from 242 to 2 occurred in 15 States. Two States had a decrease of more than 100 governments—Pennsylvania with 242 and Nebraska with 172.

Table 1 shows the national count of State and local governments by State and the changes that have occurred in the number of governments over the past 45 years. In addition, table 4 shows the changes that have occurred for each type of government.

TYPES OF LOCAL GOVERNMENTS

The following paragraphs summarize the findings of the 1987 Census of Governments concerning each of the five major types of local governments.

County Governments

Organized county governments are found throughout the Nation except for Connecticut, Rhode Island, the District of Columbia, and limited portions of other States where certain county areas lack a distinct county government. (See appendix C for a listing of county-type areas

without county government.) In Louisiana, the county governments are officially designated as "parish" governments, and the "borough" governments in Alaska resemble county governments in other States. Both are classified as county governments for census statistics on governments.

The increase from 3,041 in 1982 to 3,042 in 1987 reflects the creation of a new borough in Alaska (Northwest Arctic Borough) and a new county in Arizona (La Paz) which were partially offset by the consolidation of Terrebonne Parish with Houma city in Louisiana. Such city-county consolidations are counted for census statistics on governments as municipal governments.

The number of county governments per State ranges widely, from the Texas total of 254 down to fewer than 20 in several States. This is shown by the following distribution of county governments among the 50 States:

County governments	Number of States
100 or more	7
80 to 99	9
60 to 79	9
40 to 59	7
20 to 39	7
3 to 19	9
None	2

As shown in table 5, there are 167 county governments, located in 38 States, that serve populations of at least 250,000. These 167 county governments, constituting 5.5 percent of all county governments, account for 52 percent of the population served by all county governments in the Nation. The overwhelming majority of county governments (74 percent) each serve fewer than 50,000 persons, and the counties that have fewer than 10,000 inhabitants serve altogether only 4 million persons, a decline of 14 percent since 1977. Summary table B shows the population of areas served by county governments in 1977, 1982, and 1987. Comparison of these figures with earlier size-class distributions of counties reveals a tendency toward increased concentration of population in relatively urban counties and loss of population by numerous rural counties.

Table A. Government Units: 1962 to 1987

Type of government	1987	1982	1977	1972	1967	1962
Total	83,237	81,831	79,913	78,269	81,299	91,237
U.S. Government	1	1	1	1	1	1
State governments	50	50	50	50	50	50
Local governments	83,186	81,780	79,862	78,218	81,248	91,186
County	3,042	3,041	3,042	3,044	3,049	3,043
Municipal	19,200	19,076	18,862	18,517	18,048	18,000
Township	16,691	16,734	16,822	16,991	17,105	17,142
School district	14,721	14,851	15,174	15,781	21,782	34,678
Special district	29,532	28,078	25,962	23,885	21,264	18,323

Figure 2. Local Governments by State: 1987

County, Municipal, and Township Govern.
 School District Governments
 Special District Governments

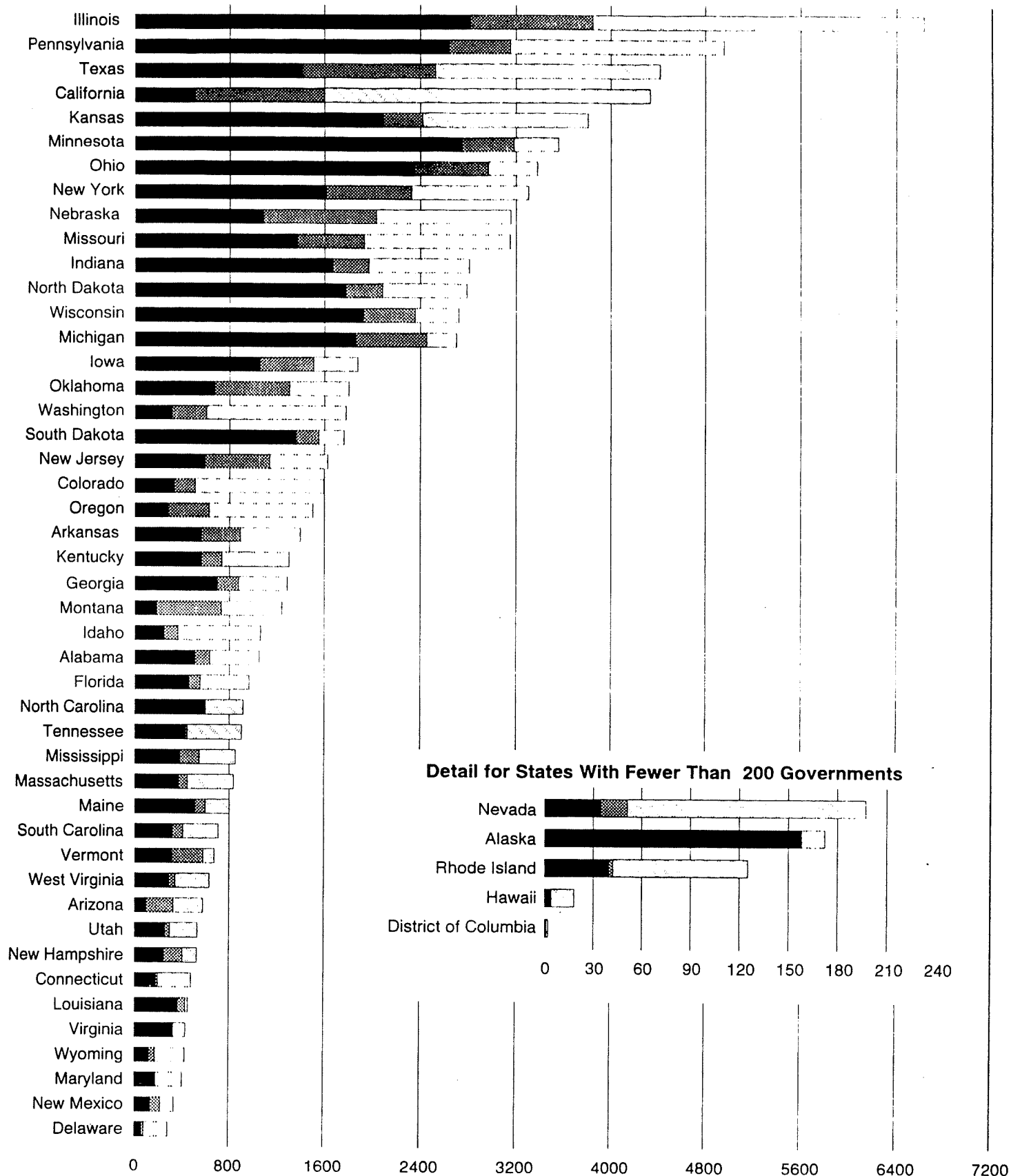
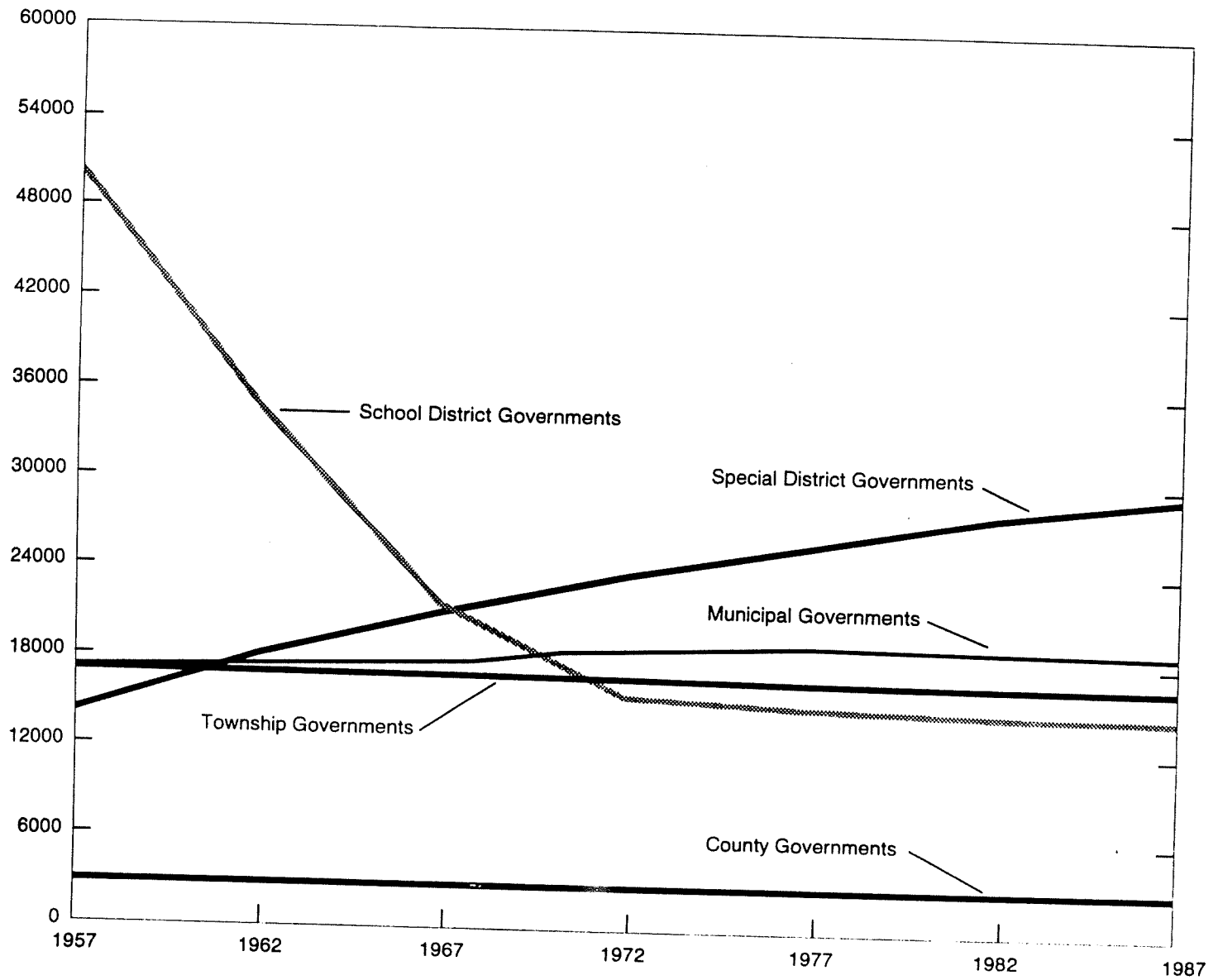


Figure 1. Local Governments by Type: 1957 to 1987

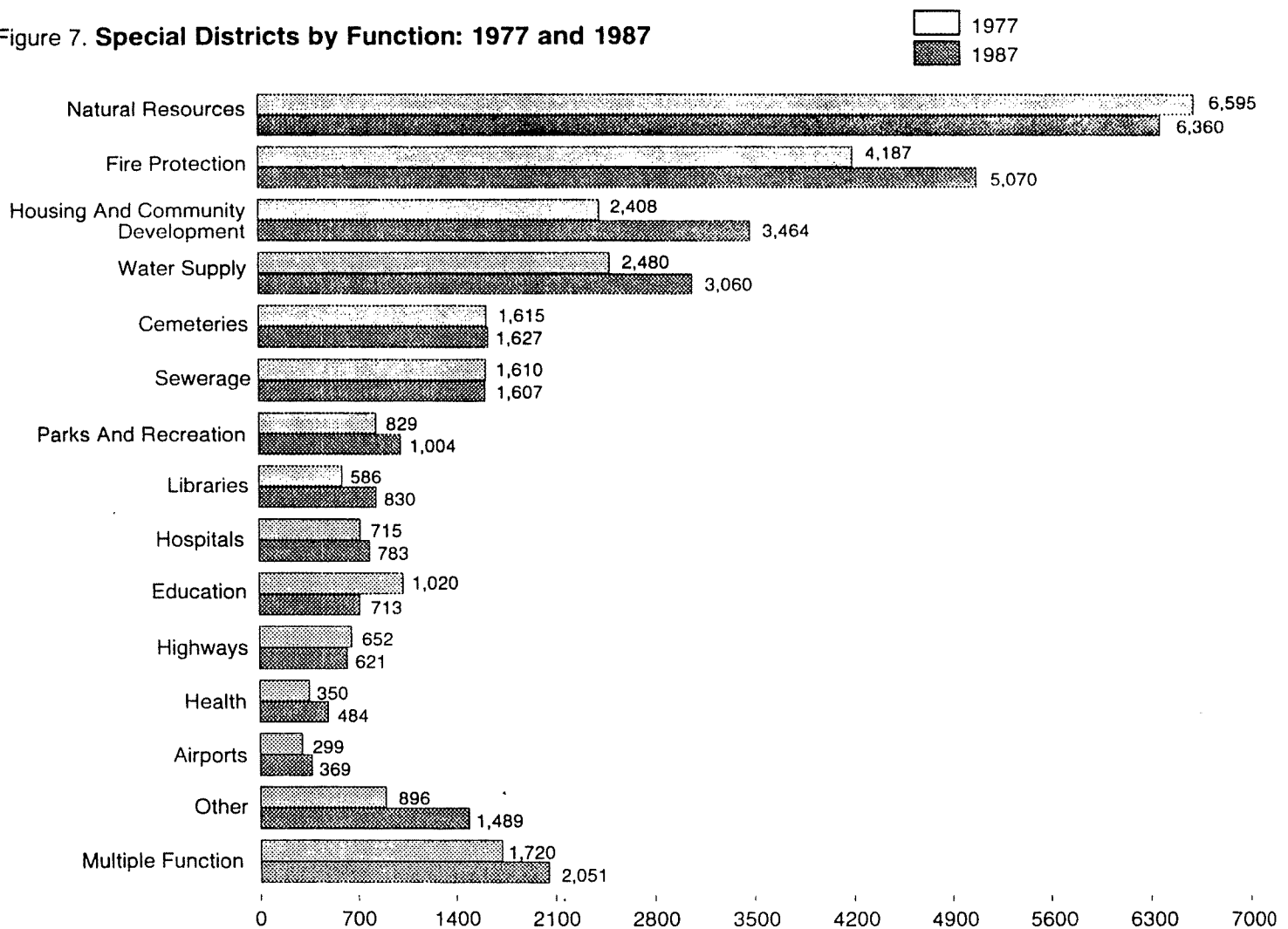


XX FIGURES

GOVERNMENTS-GOVERNMENT ORGANIZATION

1-6

Figure 7. Special Districts by Function: 1977 and 1987



Forms of Municipal Government in Kansas

During the first 46 years of statehood, the residents of cities in Kansas had no choice as to the form of government of their cities. By law there was only one form of city government—the mayor-council plan. However, the legislature in 1907 enacted two laws providing for the commission form of government in cities of the first and second class, when approved by popular vote. Six years later, in 1913, the legislature extended this same authority to cities of the third class.

A third option for cities was provided in 1917 when the legislature authorized the commission-manager form of government. Since then, three variations of the manager plan have been authorized by the legislature. The differences among them are not reflected in the powers and duties of the city manager, but rather in the composition and election of the governing body. Further, since 1961 cities have been empowered to provide for their form of government by a constitution-based home rule charter ordinance, such as has occurred in Derby and Kansas City.

The commission form of government reached its peak of popularity in Kansas in 1915, when 43 cities operated under the plan. Since 1926 the commission plan has steadily lost favor and today, only 15 cities have the plan. Since 1921, only one city has adopted the plan—that being Augusta in 1946. Four years later, Augusta abandoned the commission plan.

The manager plan was first authorized in 1917—10 years after the commission plan. The manager plan grew much more slowly than did the commission plan. While 43 cities adopted the commission plan in a seven-year period between 1908 and 1915, it was not until 1969 that an equal number of cities (43) had adopted the manager plan. However, manager plan cities now include nearly 64% of the population of Kansans living within cities.

The three basic forms or plans of city government (mayor-council, commission, and manager) have various modifications, provided for by state law or by home rule charter ordinance. For example, the manager plan includes such variations as council-manager, mayor-council-manager, and commission-manager; in Kansas City it is called the mayor-council-administrator plan, included in this article under the manager plan because of the broad powers of the city administrator. The mayor-council plan includes such variations as the “modified mayor-council plan,” used in Greensburg.

Many Kansas cities with the mayor-council or commission form have a city administrator, chief administrative officer or city clerk/administrator, as an office established by ordinance. However, these offices, except in Kansas City, do not meet the common definition of a “full” manager city and are thus not listed as under the manager plan. An article in a future issue of *Kansas Government Journal* will review the growth of city administrative offices in Kansas cities.

Basic Form of Government	Number of Cities	City Population	% of City Population
Mayor-Council	559	658,320	33.7%
Commission	15	50,240	2.5
Manager	53	1,247,170	63.8
TOTAL	627	1,955,730	100.0%

Commission Form

1908 ■ 2
Independence, Leavenworth

1909 ■ 10
+ 8: Anthony, Caldwell, Coffeyville, Hutchinson, Kansas City, Parsons, Topeka, Wichita

1910 ■ 21
+ 11: Cherryvale, Dodge City, Emporia, Eureka, Girard, Iola, Marion, Neodesha, Newton, Pittsburg, Wellington

1911 ■ 27
+ 6: Abilene, Chanute, Council Grove, Manhattan, Olathe, Pratt

1912 ■ 33
+ 6: Arkansas City, Fredonia, Great Bend, Holton, Junction City, Kingman

1913 ■ 38
+ 5: Garden City, Garnett, Lawrence, Ottawa, Sabetha

1914 ■ 42
+ 4: Fort Scott, Hiawatha, McPherson, Osawatomie

1915 ■ 43
+ 1: Horton

1917 ■ 43
+ 1: Herington -1: Wichita to CM

1921 ■ 43
+ 1: Hoxie -1: St. Marys to CM

1926 ■ 42
-1: Newton to CM

1930 ■ 41
-1: Arkansas City to CM

1932 ■ 40
-1: Great Bend to M-C

1933 ■ 39
-1: Lawrence to M-C

1935 ■ 38
-1: Council Grove to M-C

1939 ■ 37
-1: Abilene to CM

1945 ■ 36
-1: Independence to CM

1946 ■ 34
+ 1: Augusta -3: Emporia, Hutchinson, Junction City to CM

1948 ■ 31
-3: Garden City, Holton, Pittsburg to CM

1950 ■ 28
-3: Augusta to M-C; Chanute, Manhattan to CM

1952 ■ 27
-1: Parsons to CM

1962 ■ 26
-1: Olathe to CM

1963 ■ 23
-3: Coffeyville, Garnett, Osawatomie to CM

1966 ■ 22
-1: Wellington to M-C

1969 ■ 21
-1: Leavenworth to CM

1970 ■ 20
-1: Dodge City to CM

1971 ■ 18
-2: Herington, Ottawa to CM

1972 ■ 17
-1: Pratt to CM

1974 ■ 16
-1: Fort Scott to CM

1982 ■ 15
-1: Kansas City to CM

1991 ■ 15

NOTES:

Cumulative totals listed for each year.

CM: City Manager form

M-C: Mayor-Council form

Manager Form

1917 ■ 2
El Dorado, Wichita

1919 ■ 4
+ 2: Hays, McCracken

1920 ■ 5
+ 1: Winfield

1921 ■ 11
+ 6: Atchison, Belleville, Kinsley, St. Marys, Salina, Stockton

1924 ■ 13
+ 2: Hoisington, Sterling

1925 ■ 14
+ 1: LaCrosse

1926 ■ 15
+ 1: Newton

1930 ■ 16
+ 1: Arkansas City

1939 ■ 17
+ 1: Abilene

1945 ■ 19
+ 2: Independence, Liberal

1946 ■ 22
+ 3: Emporia, Hutchinson, Junction City

1947 ■ 24
+ 2: Colby, Russell

1948 ■ 29
+ 5: Concordia, Garden City, Holton, Larned, Pittsburg

1950 ■ 33
+ 4: Chanute, Great Bend, Lawrence, Manhattan

1951 ■ 34
+ 1: Augusta

1952 ■ 36
+ 2: Parsons, Wamego

1955 ■ 35
-1: Great Bend abandoned manager form

1962 ■ 38
+ 3: Olathe, Overland Park, Paola

1963 ■ 41
+ 3: Coffeyville, Garnett, Osawatomie

1969 ■ 43
+ 2: Leavenworth, Wellington

1970 ■ 45
+ 2: Bonner Springs, Dodge City

1971 ■ 47
+ 2: Herington, Ottawa

1972 ■ 48
+ 1: Pratt

1974 ■ 50
+ 2: Fort Scott, Shawnee

1980 ■ 51
+ 1: Derby

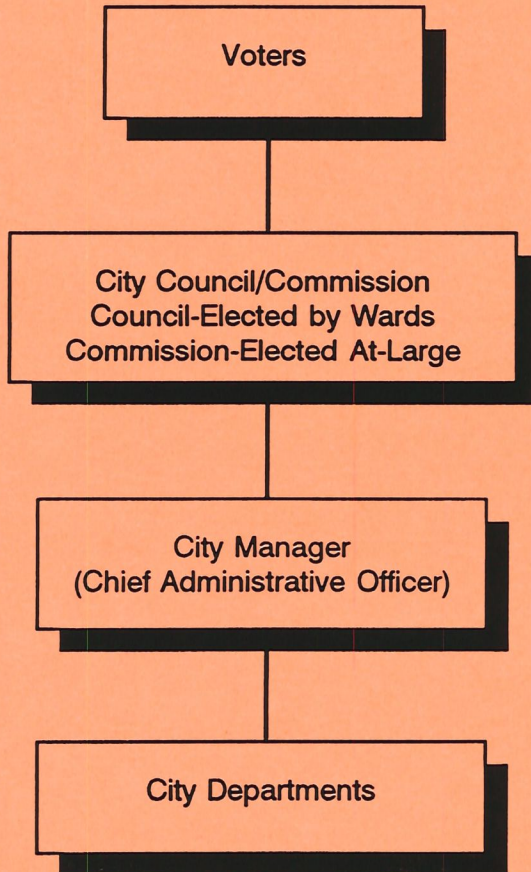
1982 ■ 53
+ 2: Goodland, Kansas City

1991 ■ 53

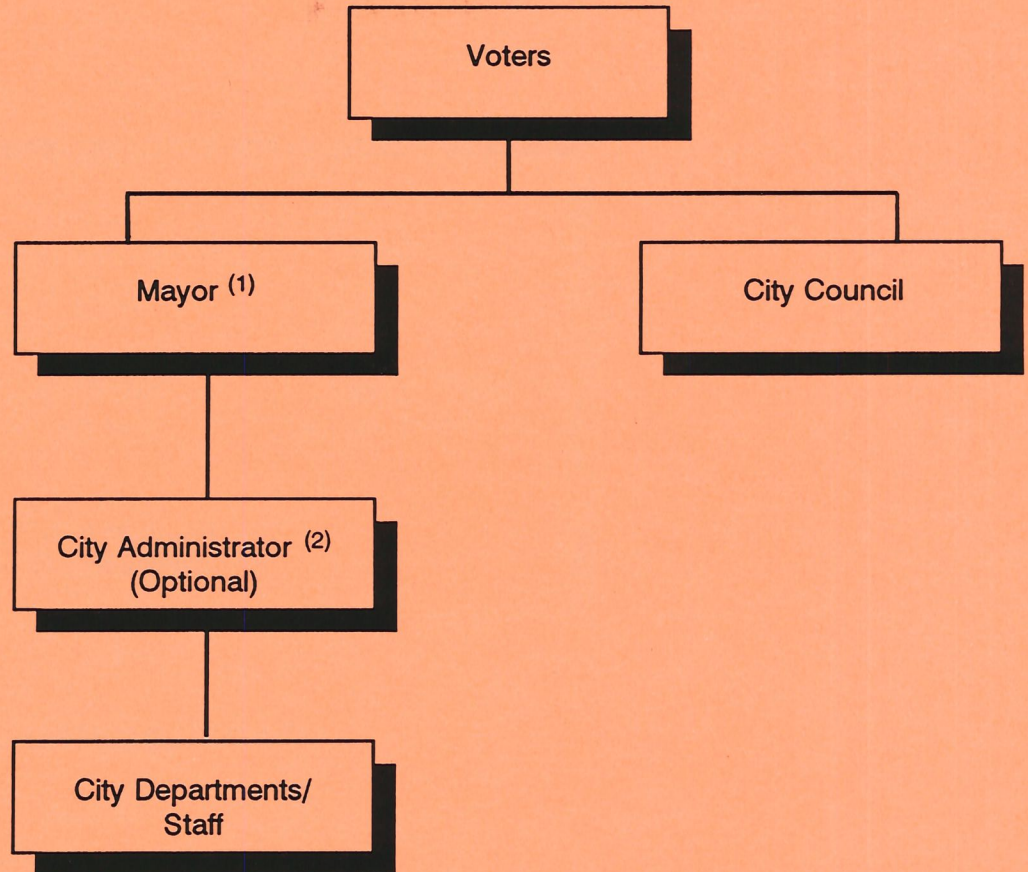
NOTE:

Cumulative totals listed for each year.

COUNCIL/COMMISSION - MANAGER
(53 cities)



MAYOR - COUNCIL
(559 cities)



(1) Mayor is chief administrator if no city administrator.

(2) 62 of the 557 Mayor-Council cities have city administrators.

COMMISSION
(15 cities)

VOTERS

Board of Commissioners
(Elected at large)

Mayor

- Police
- Fire
- Health
- Parks

Commissioner of
Finance & Revenue

- Budget
- Revenue Collection
- Financial Management

Commissioner of
Streets/Utilities

- Water
- Electric/Gas
- Streets
- Sewer

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M E M O R A N D U M

To: House/Senate Committees on Local Government

From: Theresa Kiernan
Revisor of Statutes Office

Date: January 13, 1993

Re: Kansas Open Records Act

The Kansas open records act (KORA) located in K.S.A. 45-215 et seq. declares it to be the public policy of the state that public records shall be open for inspection by any person. The act gives the public the right to inspect and copy public records unless specifically provided otherwise by law or court order.

Which local units of government are subject to KORA?

KORA applies to any political or taxing subdivision of the state and any office, officer, agency or instrumentality thereof and any other entity receiving or spending and supported in whole or in part by public funds which are appropriated by the state or a political or taxing subdivision of the state.

KORA does not apply to an officer or employee of a political or taxing subdivision of the state if the political or taxing subdivision does not provide the officer or employee with an office which is open to the public at least 35 hours a week.

Records subject to KORA.

KORA defines "public records" as any recorded information, regardless of form or characteristics, which is made, maintained

or kept by or is in the possession of any public agency.

There are 38 exemptions listed in KORA (K.S.A. 45-221). There is no statutory duty to provide access to the records exempted under the act, but the exemption may be lost by the public distribution or public reference to a record.

Some of the exemptions include:

- (a) Records which are made, maintained or kept by an individual who is a member of the governing body of the public agency;
- (b) correspondence between a public agency and a private individual, unless it gives notice of some action or is widely distributed to the public or discussed in an open meeting;
- (c) governing body records pertaining to proposed legislation; and
- (d) governing body records pertaining to research prepared for a governing body member.

Access to Records.

Any person may inspect public records during the regular office hours of the public agency and during additional time provided by the office. Written requests containing the name and address of the requestor and enough information to ascertain the records sought may be required. A disclaimer of commercial use of a list of names also may be required.

If possible, access to records shall be immediate and no later than the end of the third business day following the date of request. A detailed explanation is required for delays beyond three days along with a statement when the record will be made available.

A person has the right to have copies of the records made upon advance payment of any required fee.

If a record contains material not subject to disclosure, the public agency is required to delete such material prior to release of other information.

Requestors do not have the right to require a public agency to create a report to satisfy their request.

Duties of local units of government under KORA.

KORA requires a public agency to:

- (a) Adopt procedures for public inspection of records consistent with KORA;
- (b) provide "suitable facilities" to be used by the public for inspecting records;
- (c) appoint record custodians;
- (d) see that requests for records are handled "as soon as possible" (generally within three business days of the date of the request);
- (e) allow copying of public records, with some limited exceptions; and
- (f) prohibit the use of public records to derive lists of names to be used for commercial purposes.

Penalties for violation of KORA.

Failure to comply with the provisions of KORA constitutes nonfeasance or misfeasance of office and serves as the basis for recall and ouster.

Attorneys fees may be awarded.

It is a class C misdemeanor to knowingly sell, give or receive, for the purpose of selling or offering for sale any property or service to persons listed therein, any list of names and addresses contained in or derived from public records.

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M E M O R A N D U M

To: House/Senate Committees on Local Government

From: Theresa Kiernan
Revisor of Statutes Office

Date: January 13, 1993

Re: Kansas Open Meetings Act

The Kansas open meetings act (KOMA) located at K.S.A. 75-4317 et seq. declares to be the public policy of the state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public.

Open meetings laws are designed to ensure accountability and provide the opportunity for an informed electorate. KOMA gives the individual the right to be present and listen but not participate at public meetings (i.e. no right to speak or vote). The law also allows the imposition of rules regarding the conduct of persons attending meetings.

Which local units of government are subject to KOMA?

All legislative and administrative bodies and agencies of a political or taxing subdivision of the state (including boards, commissions, subcommittees or other subordinate groups) receiving or expending public funds are subject to KOMA.

Meetings subject to KOMA.

Any prearranged gathering or assembly by a majority of a quorum of the membership of a body, subject to KOMA, for the purpose of discussing the business or affairs of the body or agency is subject to KOMA.

Noticed required.

Notice of the date, time and location of the meeting shall be given to any person requesting notice. An agenda of the meeting, if prepared, also shall be provided to any person requesting it.

Executive (closed) sessions.

Executive or closed sessions are allowed for certain purposes, including:

- (1) Personnel matters of non-elected personnel;
- (2) consultation with attorney on matters deemed privileged in attorney-client relationship;
- (3) employer-employee relations;
- (4) confidential data relating to financial affairs or trade secrets of second parties;
- (5) matters relating to students or patients or residents of a public institution;
- (6) acquisition of real estate; and
- (7) child abuse or neglect matters.

When authorized by law to exercise quasi-judicial functions, an administrative agency is not required to act in open meeting when deliberating matters relating to a decision involving such quasi-judicial functions.

No binding action may be taken during a closed session.

Penalties for violation of KOMA.

Any person knowingly violating KOMA is subject to a civil fine up to \$500. A violator may be subject to ouster or recall. Any action taken by the body is voidable.

M E M O R A N D U M

To: House/Senate Committees on Local Government

From: Theresa Kiernan
Revisor of Statutes Office

Date: January 13, 1993

Re: Incompatibility of Office

There is no general prohibition against dual office holding. One person may hold more than one office at the same time unless there is a constitutional or statutory prohibition or unless the offices are deemed incompatible under the common law doctrine of incompatibility of office.

Incompatibility test.

Since it is difficult to define incompatibility the court has established certain tests for determining incompatibility of office. Incompatibility occurs when:

(a) The performance of the duties of one office in some way interferes with the duties of the other i.e. an inconsistency in the function of the two offices;

(b) one office is subordinate to the other; or

(c) one office operates as a check and balance upon the other.

Kansas constitutional provisions prohibiting dual officeholding.

Justices of the Kansas Supreme Court and judges of the district court shall not hold "any other office of profit or

trust under the authority of the state, or the United States, except as may be provided by laws or practice law during their continuance in office" (Article 3, Section 13).

Members of Congress or civil officers or employees of the United States are not eligible to a seat in the legislature and if a state legislator is elected to Congress or appointed to any office under the United States his acceptance vacates his or her seat (Article 12, Section 5).

Kansas statutes prohibiting dual officeholding.

City governing Body: Commissioners and mayors in cities of the first and second class shall not hold any office of profit or trust under state or federal law or hold any county or other city office (K.S.A. 13-1802 and 14-1302).

Civil Service Commissioners: Commission members in cities of the first class cannot hold or be a candidate for "any office or public trust" (K.S.A. 13-2201, 13-2204).

Library Board: No person holding office in a municipality shall be appointed a member of the library board (K.S.A. 12-1222)

Cemetery Board: No person holding "any official position under the city" shall be appointed a director of the cemetery board (K.S.A. 12-1420, applicable to cities of the second and third class).

Urban Renewal: Commissioners or officers of any urban renewal agency, board or commission exercising urban renewal powers shall not hold "any other public office under the municipality" (K.S.A. 17-4758).

County Commissioners: No person holding any state, county, township or city office shall be eligible to the office of county commissioner. Appointments may be made to state boards, etc., established pursuant to statute (K.S.A. 19-205).

County Attorney: A county attorney cannot hold any judicial or other county office (K.S.A. 19-705).

County Treasurer: No sheriff, probate judge, county attorney, county clerk, clerk of the district court, or the deputy of any of them, nor any member of the board of county commissioners can hold the office of county treasurer (K.S.A. 19-505).

Metropolitan Transit Authority: Members of the board or employees of the authority cannot hold any other office or employment under the federal, state or any county or municipal government except an honorary office without compensation (K.S.A. 12-2815). The secretary of the transit authority "shall not be

engaged in any other business or employment during his or her tenure" (K.S.A. 12-2820).

State Classified Service: Any officer or employee in the state classified service shall resign from the service upon filing as a candidate for an elective office, unless the elective office filed for is a township elective office, a county elective office, an elective office in the judicial branch of government or is elected on a nonpartisan basis (K.S.A. 75-2953(2)).

Highway Patrol: No member of the patrol shall hold "any other commission or office, elective or appointive, except in the Kansas National Guard or in the organized reserves of the United States Army, Air Force, or Navy, or accept any other employment while he is a member of the patrol" (K.S.A. 74-2113(d)).

Penalty.

If a person accepts an incompatible office, it is deemed that such person has vacated the first office automatically.

Attached are lists of compatible and incompatible offices compiled by the League of Kansas Municipalities in "Legal Aspects of Public Office" (October 1990).

Compatible Offices

The following combinations of offices have been declared compatible by decisions of the Kansas Supreme Court or by opinions issued by the Attorney General of Kansas.

- City clerk and clerk of district court (Abry v. Gray, 58 Kan. 148).
- City engineer and county engineer (AG 3/29/63).
- Sheriff or postmaster and supervisor of soil conservation district (AG 4/22/64).
- Fish and game warden and zoology professor at state university (Dyche v. Davis, 92 Kan. 971).
- Food and drug inspector is compatible with the position of hotel commissioner (Congdon v. Knapp, 106 Kan. 206).
- Elected official and county chairman of political party (AG 7/21/64).
- Municipal judge of city of second or third class and member of board of education (AG 10/25/72 and 81-21).
- Councilmember of city of third class and township officer (AG 75-50).
- Councilmember of city of second class and volunteer firefighter (AG 89-76).
- Councilmember and commissioner of city housing authority under K.S.A. 17-2337 et seq. (AG 83-363).
- Councilmember of city of third class and administrator of municipal hospital operated under K.S.A. 12-1615 (AG 77-143).
- Councilmember and chief attorney for state agency (AG 88-9).
- City treasurer and school board member (AG 89-21).
- County treasurer and school board member (AG 91-11).
- State legislator and member of board of trustees of a community college (AG 3/19/73).
- Clerk of district court and secretary to county judge (AG 73-251).
- Urban renewal board member and member of board of education (AG 75-48).
- Clerk of district court and part-time dispatcher for county sheriff (AG 75-103).
- City commissioner and attorney for drainage district (AG 75-157).
- Clerk or deputy clerk of district court and clerk of municipal court (AG 77-357).
- Township board member and township road overseer's assistant (AG 79-242).
- County commissioner and filter plant operator for city water department (AG 80-158).
- County attorney and member of board of education (AG 78-315).
- Mayor of city of third class and election commissioner (AG 81-45).
- Mayor and dog catcher where that duty is vested in mayor by ordinance and no additional compensation is paid (AG 82-49).
- County attorney and municipal judge, so long as not in the same county (AG 75-452).
- County attorney and city attorney (3rd class city) (AG 75-61).
- County commissioner and property appraiser can be compatible (AG 86-6).
- County commissioner in county with a consolidated law enforcement agency and retail liquor licensee can be compatible (AG 86-99).
- County sheriff and city chief of police (AG 75-36).
- Deputy sheriff and mayor (AG 85-8).
- Mayor of city of second class and state representative (AG 80-134).
- Mayor and volunteer firefighter (AG 81-74).
- Municipal judge and board of education member (AG 81-21).
- Teacher or other employee of USD and member of board of education of district by which employed (AG 79-108; 91-15).

NOTE: The attorney general has opined that the following offices are not incompatible as a matter of law, but that situations could develop which might create incompatibility:

- City attorney and attorney for a unified school district (AG 82-38).
- County attorney and city attorney (AG 79-25; 81-155).
- Assistant county attorney who also serves as district court trustee; small claims court judge pro tem and administrative assistant to the board of county commissioners (AG 79-254).

Attachment 6

Incompatible Offices

The following combinations of public offices have been declared incompatible by the Kansas Supreme Court or by opinions issued by the Attorney General of Kansas.

County attorney and clerk of district court (Moore v. Wesley, 125 Kan. 22)
Mayor and councilmember (Gilbert v. Craddock, 67 Kan. 346).
City commissioner and member of cemetery board of directors (AG 2/24/61).
City attorney and member of board of zoning appeals or member of library board (AG Letter 3/7/60).
City clerk and county commissioner (State v. Plynell, 46 Kan. 294 and AG 81-136).
Probate judge and city attorney (AG 7/28/72).
Councilmember and health officer under K.S.A. 68-205 (AG 11/21/72).
Councilmember and city law enforcement officer (AG 73-422).
Councilmember (city of 2nd class) and reserve law enforcement officer (AG 89-76).
Councilmember and member of planning commission (AG 77-212).
Councilmember (city of 3rd class) and police commissioner (AG 81-178).
Councilmember and director of port authority created under K.S.A. 12-3401 (AG 81-214).
Councilmember (city of 2nd class) and member of advisory board for business improvement district formed under K.S.A. 12-1781 et seq. (AG 89-77).
Councilmember and municipal judge (AG 81-107).
City commissioner (city of 1st class) and state representative (AG 91-86).
City commissioner (city of 2nd class) and member of board of education (AG 79-248).
Mayor or city councilmember or commissioner and fire chief (AG 81-249; 81-106; 82-106).
Mayor or city commissioner (city of 2nd class) and deputy sheriff (AG 91-98).
Mayor and city law enforcement officer (AG 73-233).
City clerk and city treasurer (AG 75-446).
County commissioner or mayor of city of third class and school board member (AG 81-176; 82-8).
City manager and city treasurer (AG 82-174).
County commissioner and city law enforcement officer or reserve deputy sheriff (AG 82-8).
Board of trustees of community college and city councilmember (AG 83-9).
Cemetery board of directors member may not continue to serve as board member after being elected city commissioner (AG 61-48).
County attorney and city councilmember (AG 74-214).
County attorney and county zoning administrator (AG 91-154).
Municipal judge or fire chief (2nd class cities) and mayor or councilmember (AG 81-74).
Municipal judge and part-time county attorney (AG Letter 5/13/91).
County commissioner serving as part-time sewer inspector (AG 82-111).
County commissioner and county clerk (AG 81-284).
County commissioner and board of education member (AG 79-255; 81-176).
County commissioner and hospital trustee (AG 83-11).

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M E M O R A N D U M

To: House/Senate Committees on Local Government

From: Theresa Kiernan
Revisor of Statutes Office

Date: January 13, 1993

Re: Conflicts of Interests and Governmental Ethics

The purposes of the Kansas conflicts of interest act, K.S.A. 75-4301 et seq. is to require disclosure of substantial interests of government officials and to prohibit any public officer or employee from participating in the making of a contract on behalf of the government or business in which the employee has a substantial interest.

Which local units of government are subject to the act?

The act applies to any governmental subdivision of the state, all candidates for local office, local government officers (elected or appointed), and certain employees. A governmental subdivision is a subdivision of the state having the authority to receive or hold public moneys or funds.

Substantial interest.

K.S.A. 75-4301a defines substantial interest as follows:

(a) "Substantial interest" means any of the following: (1) If an individual or an individual's spouse, either individually or collectively, has owned within the preceding 12 months a legal or equitable interest exceeding \$5,000 or 5% of any business, whichever is less, the individual has a substantial interest in that business;

(2) if an individual or an individual's spouse, either individually or collectively, has received during the preceding calendar year compensation which is or will be required to be included as taxable income on federal income tax returns of the individual and spouse in an aggregate amount of \$2,000 from any business or combination of businesses, the individual has a substantial interest in that business or combination of businesses;

(3) if an individual or individual's spouse, either individually or collectively, has received in the preceding 12 months, without reasonable and valuable consideration, goods or services having an aggregate value of \$500 or more from a business or combination of businesses, the individual has substantial interest in that business or combination of businesses;

(4) if an individual or an individual's spouse holds the position of officer, director, associate, partner or proprietor of any business, other than an organization exempt from federal taxation of corporations under section 501(c)(3), (4), (6), (7), (8), (10), or (19) of chapter 26 of the United States code, the individual has a substantial interest in that business, irrespective of the amount of compensation received by the individual or individual's spouse; and

(5) if an individual or an individual's spouse receives compensation which is a portion or percentage of each separate fee or commission paid to a business or combination of businesses, the individual has a substantial interest in any client or customer who pays fees or commissions to the business or combination of businesses from which fees or commissions the individual or the individual's spouse, either individually or collectively, received an aggregate of \$2,000 or more in the preceding calendar year.

As used in this subsection, "client or customer" means a business or combination of businesses.

The act does not define the term "conflict of interest" but implicitly equates such term with "substantial interest."

Disclosure requirements.

All candidates for local office must file statements of interests at the times specified in K.S.A. 75-4302a. Such statements are filed in the office where declarations of candidacy for the local office sought or held by the individual are required to be filed.

Local government officers and employees must file before acting on any matter which will affect any business in which the officer or employee has substantial interest.

Limitations on making contracts and other matters.

Public officials are required to abstain from making or participating in the making of a contract with a business in which the official is employed or has a substantial interest. Further, no person or business may enter into any contract if a local government officer or employee, acting in that capacity, is a signatory to or a participant in the making of the contract and is employed by or has a substantial interest in the person or business. This prohibition applies regardless of whether the substantial interest has been disclosed as required under the law.

The above rules do not apply if either (1) the contract is let after competitive bidding has been advertised for by published notice or (2) the contract is for property or services for which the price or rate is fixed by law.

No local government officer or employee may act on any matter affecting a business in which such person has a substantial interest unless a written report of the nature of the interest is filed with the county election officer of the subdivision.

Penalties.

Failure to file the required substantial interest statements or acting on contracts in violation of the law are class B misdemeanors. Further, any local official convicted of violating the contract provisions forfeits his or her office or employment.